

RECEIVED
CENTRAL FAX CENTER

Application Serial No. 09/755,738

JAN 11 2006

REMARKS

1. Applicant thanks the Examiner for the Examiner's comments, which have greatly assisted Applicant in responding, especially in the Response to Arguments
5 section.
2. **35 USC §102.**

10 The Examiner rejected Claims 1-85 under 35 USC §102(e) as being anticipated by U.S. Patent No. 6,725,399 to Bowman.

15 Applicant respectfully disagrees. The Examiner has rejected the claimed invention under 35 USC 102(e), i.e., the cited reference is deemed to anticipate the claimed invention. Anticipation requires that the cited reference teach each and every element of the claimed invention. That is, the cited reference must be, in effect, a complete teaching of the claimed invention.

20 Regarding claim 1: The claimed invention provides a method for developing a multi-channel database in a compute network. The Examiner erroneously finds that Bowman is concerned with the same area of technology. Bowman concerns itself with a method for testing computer software. The method is intended for operation on software which "may or may not have been previously subjected to. . . tests[.]" Abstract, line 1 to line 4. The Examiner points to no teaching from Bowman that provides that basis for finding that Bowman describes "a method for 25 developing a multi-channel database in a computer network." Thus, the finding is apparently the Examiner's own conclusion, unsupported by evidence. While the development stage described in claim 1 does include a "system test," the claimed Invention plainly has nothing to do with development of software test. Nor does Bowman have anything to do with development of multi-channel databases.

30

The Examiner relies on Col. 2, line 44-47 of Bowman as teaching "providing a first phase for planning." While Bowman does teach a planning phase, it is a phase of a software testing method, and not a planning phase of a method for developing a multi-channel database.

5 The Examiner relies on col. 2, line 44-47 of Bowman as teaching "responsive to said providing a first phase for planning." What Bowman actually describes is a planning phase for a software test.

10 The Examiner next relies on col. 2, line 53-56 as teaching "comprising business and technical requirements gathering. What Bowman actually describes is the development of a test environment that simulates a business environment.
15 The cited matter has nothing to do with ascertaining business and technical requirements for a multi-channel database.

15 The Examiner next relies on col. 2, line 61-65 as teaching "responsive to said providing a second phase for discovery . . . comprising reviewing data analysis and determining specifications." Thus, what is being described is the gathering of information necessary to formulate a data model for the database to be developed. Bowman, on the other hand, is describing a results analysis—a functional test—to determine which areas of the software application under test are in need of repair, and collection and analysis of metrics to measure system
20 readiness. Measurements of system readiness have nothing to do with data analysis and determining specifications prior to development of a database.

25 The Examiner next relies on col. 7, line 38-41 of Bowman as teaching "creating and modifying software programs and performing unit system test on the computer network." While the cited matter does describe a system test it is of a software-testing environment, not a multi-channel database. Additionally, the Examiner has failed to point out where Bowman describes modifying software programs.

30 The Examiner next relies on col. 2, line 57-60 as teaching "providing a fifth phase for deployment." In other words, the deployment of the database is being described. On the other hand, Bowman is describing test execution. The

Application Serial No. 09/755,738

Examiner can only agree that deployment of a multi-channel marketing database is decidedly not the same thing as executing a software test.

Applicant again reminds the Examiner that Applicant's claims are entitled to a presumption of validity and that the burden is on the Examiner to establish the 5 unpatentability of Applicant's claims, for example, as being anticipated by the prior art. Here, the Examiner has failed to establish that each and every element of the claimed invention is found in the cited reference. In summary, the cited reference is not concerned with the same technology as that of the claimed invention and therefore cannot teach Applicant's Invention. Additionally, none of the claimed 10 elements set forth in Applicant's claim 1 are found in the cited reference. In effect, the Examiner's position is that Bowman is identical to what Applicant is claiming. This plainly is not the case.

The above arguments apply equally to claim 85.

Therefore, claims 1 and 85 are deemed to be allowable over Bowman. A 15 claim that depends from an allowable claim is allowable with any additional consideration of its merits. Therefore, claims 2-84 are allowable as well.

Regarding claim 49: the Examiner relies on col. 68, line 47-66 as teaching "creating a physical data model." Applicant is completely at a loss to understand the Examiner's reasoning here. What is shown is a table of results from a 20 software test to determine if the software program being tested is suitable for a specific set of requirements. Unfortunately, the Examiner has offered no explanation of the reasoning that caused him to conclude that a tabular report of test results is the same as a step of "creating a physical data model," merely providing a bald statement that claim 49 reads on the cited subject matter from Bowman. Accordingly, the rejection of claim 49 is deemed to be without merit. 25 Claim 49 is therefore allowable.

As above, Applicant deems claims 1 and 85 to be allowable. Nevertheless, in the interest of expediting prosecution, claims 1 and 85 are amended to describe "creating a physical data model." Claim 49 is cancelled from the application. The 30 claims are amended only for the purpose of describing the invention with greater specificity, thereby expediting prosecution, and not for establishing patentability.

Application Serial No. 09/755,738

The Examiner is not to interpret Applicant's action as an agreement with the Examiner's findings. Furthermore, Applicant expressly reserves the right to pursue patent protection for the broader claims in a future application.

Application Serial No. 09/755,738

CONCLUSION

Based on the foregoing; Applicant considers the present invention to be distinguished from the art of record. Accordingly, Applicant earnestly solicits the
5 Examiner's withdrawal of the rejections raised in the above referenced Office Action, such that a Notice of Allowance is forwarded to Applicant, and the present application is therefore allowed to issue as a United States patent. The Examiner is invited to contact Applicant's Attorney at 408-474-8400 to discuss the response.

10

Respectfully Submitted,



Christopher Pell

15

Reg. No. 45,005

20 Customer No. 22862

Page 6 of 19